STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 31, 2005
v	No. 253688 Wayne Circuit Court
SHAWNRELL LAMONT COOLEY, Defendant-Appellant.	LC No. 03-010733-01

Before: Meter, P.J., and Bandstra and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of felon in possession of a firearm, MCL 750.224f, two counts of felonious assault, MCL 750.82, assaulting or resisting a police officer, MCL 750.81d(1), and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as a third offense habitual offender, MCL 769.11, to concurrent terms of 2 to 5 years in prison for the felon in possession conviction, 1 to 4 years in prison for each assault conviction, 1 to 2 years in prison for the assaulting or resisting conviction, to run consecutive to 5 years in prison for the felony-firearm conviction. We affirm.

I. Underlying Facts

Defendant's convictions arise from an assault on two hotel workers with a firearm and an assault on a police officer. Daniel Martin, a hotel front desk clerk, testified that he was seated behind a security window that overlooked the hotel lobby when he saw a group, which included defendant, congregated outside the front entrance. Martin was familiar with defendant, who was a hotel guest. Martin asked a security guard, James Freeman, to tell the group to disperse. After doing so, Freeman came back inside the hotel, with defendant following behind. According to Martin and Freeman, an argument ensued, and defendant reached behind his back and pulled a handgun from his waistband. Defendant put the gun against the front desk window, pointed it directly at Martin, and threatened to "blow [Martin's] brains out." Defendant then placed the gun against Freeman's side, and threatened to kill everyone. Defendant ultimately went upstairs, and Martin called the police. Shortly thereafter, defendant went outside, where he was apprehended by the police.

A police officer testified that he received a "person with a weapon" report and saw defendant "walking quickly," as he approached the hotel. While searching defendant, the officer found an empty gun holster situated near the middle of his back. The police searched

defendant's hotel room and the surrounding area, but did not find a firearm. A police officer testified that, after defendant was taken to the police station, an officer removed defendant's handcuffs, defendant struck the officer, and a struggle ensued. Both the officer and defendant suffered injuries.

II. Effective Assistance of Counsel

Defendant first argues that defense counsel was ineffective for failing to adequately cross-examine the prosecution witnesses and for failing to call several witnesses. We disagree. Because defendant failed to move for a new trial or for a *Ginther*[1] hearing, our review is limited to mistakes apparent on the record. *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000).

"Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise." *People v Solomonson*, 261 Mich App 657, 663; 683 NW2d 761 (2004). "In order to overcome this presumption, defendant must first show that counsel's performance was deficient as measured against an objective standard of reasonableness under the circumstances and according to prevailing professional norms." *Id*. "Second, defendant must show that the deficiency was so prejudicial that he was deprived of a fair trial such that there is a reasonable probability that but for counsel's unprofessional errors the trial outcome would have been different." *Id*. at 663-664. "The defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy," and "this Court neither substitutes its judgment for that of counsel regarding matters of trial strategy, nor makes an assessment of counsel's competence with the benefit of hindsight." *People v Matuszak*, 263 Mich App 42, 58; 687 NW2d 342 (2004).

Defendant argues that defense counsel was ineffective for failing to investigate the case, thereby preventing him from adequately cross-examining the prosecution witnesses. When claiming ineffective assistance because of counsel's alleged unpreparedness, a defendant must show prejudice resulting from the alleged lack of preparation. *People v Caballero*, 184 Mich App 636, 640; 459 NW2d 80 (1990). Nothing in the record supports defendant's assertion that defense counsel was unprepared to cross-examine the prosecution witnesses. To the contrary, it is apparent from the record that defense counsel was familiar with this relatively straightforward case, and adequately cross-examined the witnesses. Although defendant lodges a general complaint, he has failed to indicate what questions defense counsel failed to ask, or what supportive information the answers to the unasked questions could have yielded. "Defendant may not leave it to this Court to search for a factual basis to sustain or reject his position." *People v Traylor*, 245 Mich App 460, 464; 628 NW2d 120 (2001), quoting *People v Norman*, 184 Mich App 255, 260; 457 NW2d 136 (1990). Further, even if defendant had cited an unasked question, decisions about what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). And because we will not substitute our judgment for that of counsel regarding matters of trial strategy, *Matuszak*, *supra* at 58, defendant is not entitled to relief on this basis.

[1] *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

Defendant next argues that defense counsel was ineffective for failing to call witnesses who "would have impeached the credibility of the prosecution's witnesses and would have cast reasonable doubt on their claims that [defendant] was carrying a concealed weapon." The failure to call a supporting witness does not inherently amount to ineffective assistance of counsel, and there is no "unconditional obligation to call or interview every possible witness suggested by a defendant." *People v Beard*, 459 Mich 918, 919; 589 NW2d 774 (1998). Again, a trial counsel's decisions concerning what evidence to present and whether to call or question witnesses are matters of trial strategy. *Rockey*, *supra* at 76. "In order to overcome the presumption of sound trial strategy, the defendant must show that his counsel's failure to call [the] witnesses deprived him of a substantial defense that would have affected the outcome of the proceeding." *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994).

Defendant claims that, before trial, defense counsel indicated that he would call three witnesses. But defendant has not identified the witnesses, or the substance of the proposed testimony that allegedly would have been valuable to his defense or affected the outcome of the trial. Even if defense counsel had initially planned to call three witnesses, defendant has failed to overcome the presumption that defense counsel, as a matter of trial strategy, reasonably refrained from calling the witnesses for various reasons, including that their testimony would have been of little significance in this case. *Daniel*, *supra* at 58. Contrary to defendant's suggestion, the fact that the strategy chosen by defense counsel did not work does not constitute ineffective assistance of counsel. *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996). Further, defendant has failed to demonstrate a reasonable probability that, but for counsel's failure to call the witnesses, the result of the proceeding would have been different; therefore, he is not entitled to relief on this issue. *Solomonson*, *supra* at 663-664.[2]

III. Sufficiency of the Evidence

Defendant next argues that the evidence was insufficient to support his convictions for felon in possession of a firearm and felony-firearm.[3] We disagree.

When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 amended 441 Mich 1201 (1992). "Circumstantial evidence and reasonable inferences drawn

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[2] In his statement of the issue, defendant also argues that defense counsel was ineffective for failing to file pretrial motions. However, defendant fails to provide any discussion or analysis to support this claim. Defendant's cursory presentation of this assertion in his statement of the issue, without supporting analysis, is insufficient to properly present the issue for this Court's review. *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001) (an appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, or give an issue cursory treatment with little or no citation of supporting authority).

[3] Defendant also argues that there was insufficient evidence to sustain a conviction of carrying a MCL 750.227; however, defendant was not charged with or convicted of CCW.

therefrom may be sufficient to prove the elements of the crime." *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996), quoting *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

To sustain a conviction for felon in possession of a firearm, the prosecution must establish beyond a reasonable doubt that the defendant: (1) possessed a firearm, (2) had been convicted of a prior felony, and (3) less than five years had elapsed since the defendant was discharged from probation. MCL 750.224(f); *People v Parker*, 230 Mich App 677, 684-685; 584 NW2d 753 (1998). The prosecution and the defense stipulated that defendant was convicted of a specified felony, and thus, was ineligible to possess a firearm. To sustain a conviction for felony-firearm, the prosecution must establish beyond a reasonable doubt that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony. MCL 750.227b(1); *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). For both offenses, defendant challenges only the possession element.

Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to infer that defendant possessed a firearm. Martin testified that defendant removed a gun from behind his back, pointed it directly at him, threatened to kill him, and then placed the gun against Freeman's side. Freeman testified that he saw the gun, and also felt it against his side. Both Martin and Freeman described the firearm as a black semi-automatic handgun. The police did not recover a gun, but found an empty gun holster positioned in the middle of defendant's back. From this evidence, a jury could reasonably infer that defendant possessed a firearm. Defendant's challenge to the sufficiency of the evidence establishing possession concerns the credibility of the witnesses and the weight of the evidence. But this Court will not interfere with the jury's determination of the weight of the evidence or the credibility of the witnesses. *Wolfe*, *supra* at 514. The jury was entitled to accept or reject any of the evidence presented. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). Viewed in a light most favorable to the prosecution, the evidence was sufficient to sustain defendant's convictions of felon in possession of a firearm and felony-firearm.

We affirm.

/s/ Patrick M. Meter
/s/ Richard A. Bandstra
/s/ Stephen L. Borrello